

UNIVERSITY OF UTAH
COLLEGE OF LAW

Criminal Procedure
Prof. Paul Cassell

Fall, 2000
December 16, 2000

FINAL EXAMINATION

Instructions

This examination begins at 8:30 a.m. It is designed to be a three-hour examination with three questions of one hour each. Each of the three questions will be given equal weight in determining the final grade. You are given an extra hour to allocate as you see fit. You must turn in your examination by 12:30 p.m.

This is essentially an open book examination. You may have the following materials with you: your textbook, your textbook supplement, my supplemental materials, any materials distributed during the course, any outline that you may have prepared by yourself or with other students. You may not have the following materials: any commercial publications, hornbooks, or the like, in either printed or electronic form.

In accordance with standard law school procedure, do not write your name anywhere on your exam or any other information that could be used to identify you. Write your exam number on your exam. This permits evaluation without knowledge of the exam-taker's identity. If possible, please do not write in pencil (it is difficult to read).

Page limits: **if you are handwriting this exam, you are limited to a total of three bluebooks, one side of each page, every other line.** The three bluebook limit is a limit for the whole exam; for example, if you have space left over in the first bluebook after answering Question I, you can use that space for Question II, etc. **if you are typewriting this exam, you are limited to a total of 4300 words for the entire exam. (This word limit is roughly 13 pages).** **On the last line of the exam, please type in the number of words that your word processing package shows for the test.**

If you think that you need more facts for any question, identify the facts you need and state how they would affect your answer.

This examination consists of 5 pages (excluding the cover page). Please make sure you have all pages.

Any similarities to persons, alive or dead, is purely coincidental.

QUESTION I

On November 7, 2000 — election day — Danny D. Driver decides to make sure that he will win the election to be Salt Lake County dog catcher. Accordingly, Driver steals 10,000 ballots, marks them all for himself, and begins to drive his Mustang to his local precinct to stuff the ballot box. One block from the precinct, he makes a left turn without signaling, a violation of the traffic code. Officer Olivia Ochoa pulls him over, and asks to see his license and registration. In his haste leaving his house, Driver has forgotten his wallet and thus does not have with him his driver's license or any other form of identification. (Driving on public highways without a driver's license in one's possession is a criminal offense.) Driver provides his name to Ochoa, who returns to her car and, via radio, determines that a "Danny D. Driver" does have a driver's license and is not wanted for arrest.

Ochoa then returns to Driver's car, and spends about five minutes asking Driver a series of questions designed to establish whether he is really Danny Driver. The last question she asks is whether the Defendant has anything else in the car with his name on it. Driver says that he has some correspondence addressed to him in his glove compartment. Ochoa asks for permission to search the glove compartment, and Driver says "I'm not really sure about that." Ochoa then says that she could probably get a warrant to search the glove compartment. Driver says, "Okay, go ahead."

After directing Driver to exit his vehicle, Ochoa enters the car and opens the glove compartment. There she sees correspondence addressed to him. As she prepares to get out of the car, she notices a few ballots sticking out of a box in the back seat. She opens the box and sees 5,000 marked election ballots. Realizing immediately that this is not proper, she asks Driver about them. Driver admits his plan to steal the election by stuffing the ballot box. Ochoa places Driver under arrest for election fraud and immediately searches the trunk of his car. There she discover more fraudulent ballots and a 12 ounces of cocaine. Ochoa waived the cocaine at Driver and asked "What's this?!" Driver admitted he intended to use the cocaine at his "victory" party with his campaign manager, Marla Manager. Under further questioning, Driver tells Ochoa that Manager is about to stuff fraudulently-marked ballots for him in another precinct.

With Driver in the backseat of her car, Ochoa then immediately drives over to that precinct. Driver points out Manager's pickup truck as it arrives at the parking lot next to the precinct. Ochoa approaches Manager in the truck, asks her to get out, and looks in the back, seeing a sealed box. Ochoa pulls the box out, opens it up, and finds another 5,000 fraudulent ballots.

Had Driver made it all the way to precinct, he would have run into six federal law enforcement officers. Based on a three-month investigation into Driver's election plans, they were waiting, with a valid arrest warrant and a valid search warrant for his car. They were not

aware, however, of Manager's involvement in the scheme.

Driver is prosecuted in state court for both election fraud and possession of cocaine. The prosecutor wishes to introduce into evidence the ballots, the cocaine, and Driver's statements. Manager is also prosecuted for election fraud, and the prosecutor wishes to use all of the evidence found in her pickup truck against her.

Discuss the issues of criminal procedure that arise under the United States Constitution and the Utah Constitution.

QUESTION II

Al Snore is a candidate for President of the United States. The outcome of the election hinges on results in Utah and, in particular, the results from St. George, in the southern part of the state. By order of the Utah Supreme Court, a Ryder truck has been hired to drive the ballots up to Salt Lake City. The truck is driven up the interstate highway by Jim Jones. The truck is one vehicle – that is, it consists of the cab in the front and the large cargo compartment in the back. The cargo compartment is not accessible from the cab where the driver sits.

About 120 miles south of Salt Lake City, 5 miles south of Fillmore, Utah, the truck passes Officer Walker, who notices that the truck seems to be weaving wildly. Walker follows the truck for a mile, seeing it continuing to weave back and forth in the lane a number of times. Suspecting that the driver might be driving under the influence, Walker pulls the truck over. He asks for, and receives, Jones' driver's license and registration, which all appear to be in order. Without returning the license or registration, he asks Walker to exit the vehicle to perform several field sobriety tests. Jones performs miserably on these tests, falling down several times while trying to perform them.

After obtaining a "backup" officer to guard the Ryder truck, Walker then tells Jones that he wants to perform a breathalyzer test. Walker directs Jones to get into the back of his squad car. Walker drives Jones to the police station in Fillmore where, thirty minutes later, a breathalyzer analysis shows that Jones is clearly driving under the influence of alcohol. Without telling Jones the results, Walker asks Jones if he has been drinking. Jones admits that he "had a six pack ... or two" on the way up from St. George. Walker then administers *Miranda* warnings, and Jones declines to make any further statements and asks for an attorney. Walker then asks Jones for information to enter into the jailhouse record keeping system. Walker asks Jones for his address: Jones says, "I live at 202 Bourbon Street in St. George, not too far from where I bought those beers." Walker then obtains other identifying information from Jones. Jones' speech throughout all of his discussions is quite slurred and often incoherent.

Walker then returns to the Ryder truck, which has remained under police guard. Walker then examines the cab, discovering several empty beer cans. He then goes around to the back of the truck and enters the cargo compartment. There he finds numerous brown cardboard boxes and a shaving kit that draws his attention. Opening the shaving kit, he discovers some

marijuana.

The truck is later taken to the impound lot of the Fillmore police. Police do an inventory of the contents, but do not open all the cardboard boxes market “ballots.” Instead, they open one box that appears to be different than the others – and discover inside of it some cocaine.

Jones is charged with driving under the influence, possession of marijuana, and possession of cocaine. At his arraignment in Fillmore, Walker asks for counsel to be appointed. The judge promises to arrange an attorney for him. Walker then drives Jones back to the Fillmore county jail. On the way back, Walker asks Jones if he is willing to talk about the offense. Jones agrees. Walker reads Jones all his *Miranda* rights and asks for a waiver. Jones says he understand his rights and waives his rights. Jones signs a written waiver. Jones then admits that he was under the influence not only of alcohol but also marijuana on the day of the offense.

Before Jones left that morning, Ryder Rental Trucks, Inc., the company that employs him, had administered a urine analysis. This analysis showed that Jones had traces of alcohol, marijuana, and cocaine in his system. The company has turned over the results of that analysis to the prosecutor.

The prosecutor wishes to use all of the evidence against Jones.

Discuss the issues of criminal procedure that arise under the United States Constitution and the Utah Constitution.

QUESTION III

George W. Mush is the other candidate to be President of the United States. On November 30, 2000, while the issue of the vote in Utah is in doubt, he hires the law firm of Able, Baker, and Carr – a Salt Lake City firm – to represent his interests.

The Federal Bureau of Investigation suspects that the Able, Baker, and Carr plan to fix the outcome of the election by preparing 2,000 fraudulent ballots all marked for Mush and dropping them into a stack of ballots being recounted. The FBI has learned this from a confidential informant who has provided reliable information on three different occasions in the past. Accordingly, the FBI prepares the following affidavit in support of a search warrant:

1. A confidential informant (CI) has provided reliable information to the undersigned affiant on three occasions in the last six months. This information has lead to the arrest and conviction of three persons for felony fraud violations.

2. On November 29, 2000, CI visited the law offices of Able, Baker, and Carr, which is located at 101 Main Street in Salt Lake City, UT. There he saw approximately 2,000 ballots for the United States Presidential election all marked for George W. Bush. The ballots appeared to be fraudulent.

The search warrant properly and particularly identifies the location of the law offices of Able, Baker, and Carr at 101 Main Street and identifies the items to be seized as “approximately 2,000 ballots for the U.S. Presidential election marked for George W. Mush.”

The appropriate federal magistrate reviews the affidavit and signs the search warrant. Nothing in the search warrant mentions that the CI has told the FBI agents that one of the lawyers in the firm, Alan Able, is carrying a concealed weapon. Unknown both to the magistrate and to the FBI agents, the CI is a life-long political opponent of Mush and has deliberately provided false information about what he has seen at the law offices in order to embarrass Mush and the lawyers who support him. The CI is telling the truth, however, in reporting that Able is armed. Able has a valid and lawful permit authorizing him to carry a conceal weapon in Utah and always carries a weapon with him.

On November 30, 2000, FBI agent Francine Francis and several colleagues execute the search warrant at the offices of Able, Baker, and Carr.

Francis first asks all three lawyers to sit together around the conference table in the office. Francis then frisks Able, Baker, and Carr for weapons. She find nothing on Baker and Carr, but on Able she feels something hard that appears to be a weapon in his jacket pocket. Francis reaches inside his pocket, and pulls out the gun. This dislodges some cocaine from his pocket, which falls to the floor. Francis places Able under arrest and secures the cocaine. Francis then turns to Barbara Baker, who is seated next to Able, and says “I wonder if you have the same stuff.” She then searches Baker’s purse, discovering some marijuana. She arrests Baker and reaches inside the pocket of the jacket that Baker is wearing and discovers some marijuana. Baker is placed under arrest as well.

Agent and other officers search through offices for the ballots, but find nothing there. They also search the desk belonging to Carol Carr, the other attorney at the firm, and discover hundreds of fraudulent social security cards. Carr is placed under arrest.

The prosecutor wishes to charge Able for possession of cocaine, Baker for possession of marijuana and heroin, and Carr for possession of fraudulent social security documents.

Discuss the issues of criminal procedure that arise under the United States Constitution and the Utah Constitution.